

MINUTES
SENATE JUDICIARY & RULES COMMITTEE

DATE: Wednesday, March 01, 2017

TIME: 1:15 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Lee, Senators Davis, Hagedorn, Anthon, Agenbroad, Foreman, Burgoyne, and Nye

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Lodge** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:25 p.m.

S 1093 **Regarding unlawful entry.** **Senator Rice** explained that this bill raises unlawful entries committed while an offender is fleeing from the police to a felony. He reported on an incident involving an offender fleeing from the police who broke into the bedroom of a teenage girl, causing her great emotional trauma. The highest level of penalty with which the offender could be charged was a misdemeanor. **Senator Rice** asserted that this behavior poses a severe risk of harm to citizens, thereby warranting a felony charge. He commented that while he does not like to create felonies, in this circumstance the felony charge is appropriate.

Senator Foreman indicated that as a police officer he has been involved in many pursuit incidents. He pointed out that most of those situations involved young, intoxicated, unarmed individuals who entered the premises out of desperation. Although agreeing that the situation was frightening and could be dangerous, **Senator Foreman** believed, in view of the age and the mindset of most of these offenders, that a felony charge was too heavy a penalty. In the cases involving people who were armed and running from the police for substantial reasons, those offenders have other charges to levy against them that are already in place. **Senator Rice** acknowledged that sometimes the offenders are fleeing after committing a felony, and sometimes the offense they are trying to escape is a misdemeanor. He pointed out that in an intoxicated state there is the danger of harm coming to the person inside the building. **Senator Rice** stated it is necessary to consider the level of harm done. Processes are in place to deal with offenders who were just being stupid ranging from prosecutorial discretion, whereby the prosecutor can decide whether to give felony or misdemeanor charge, to statutory processes allowing the offender to have the felony reduced at a later time. He emphasized that the State's criminal code should ensure that the level of punishment is appropriate to the harm that can be caused by the activity.

Senator Agenbroad asked what the charges would be if the offender mentioned had broken into the girl's room but had not been fleeing from the law. **Senator Rice** replied that had he not been fleeing but broke in without the intent to commit a criminal offense inside, it would have been a misdemeanor. Under **S 1093** it would still be a misdemeanor. This bill only deals with those circumstances when the entry is not for the purpose of committing a crime, but is for the purpose of trying to flee and evade the police. If the person were planning some other illegal activity upon gaining entrance, the burglary statute would be followed.

Senator Lee referred to Idaho Code § 19-5304, asking if recovery of economic loss is currently possible, if it is a new aspect of this crime under **S 1093**, or if its inclusion is just for clarification. **Senator Rice** replied there is some equivocation between two different statutes on victim restitution. Under one of the statutes the individual would not be entitled to restitution, so this clarifies that the victim can recover economic loss.

Senator Anthon what charge would be made for evading police. **Senator Rice** explained that if the offender is driving a vehicle the charge is felony eluding; if he/she is not driving a vehicle it is a misdemeanor.

Senator Hagedorn asked if having an arrest warrant pending would be considered being pursued by law enforcement. **Senator Rice** replied it would not be considered being pursued, but being sought by law enforcement.

Senator Burgoyne inquired if the crime of burglary involves breaking in with the intention of committing a felony. **Senator Rice** said the classic common law definition is breaking and entering a dwelling with the intent to commit a felony therein. That is not the statutory definition. The statutory definition includes just opening something that is not locked with the intent to commit a crime therein, and has been expanded to include areas other than a dwelling. **Senator Burgoyne** asked about the degree to which entering the dwelling in order to escape an officer is like breaking and entering to commit a crime. **Senator Rice** stated that the fleeing is occurring regardless of the entry, not as a result of the entry.

Senator Foreman offered the interpretation of law enforcement with regard to some of the issues mentioned. He reported law enforcement used the terms resisting and obstructing for fleeing from law enforcement. He stated that law enforcement considered entering a dwelling, car, or building with the intent to commit a theft or a felony as burglary.

Senator Davis quoted Idaho Code § 18-1401 as defining burglary as "any person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, trailer, airplane, or railroad car with the intent to commit any theft, or any felony, is guilty of burglary."

MOTION:

Senator Anthon moved to send **S 1093** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion.

Senator Burgoyne felt this was a close issue, and he stated he understood the motivation. He expressed his concern with the tendency of our society for creating felonies, and thought adding "and is armed" would make it a more serious crime.

Senator Foreman disclosed that he was voting no for the same reasons as Senator Burgoyne. He stated he wanted to support the legislation, and he appreciated the good intent. He felt it was too harsh.

Senator Anthon expressed appreciation regarding the comments about watering down felonies. He felt that this bill represents a narrow situation where someone on foot is committing a misdemeanor and entering into someone's home. By doing so the person avoids the burglary statute that requires the intent to commit a felony. **Senator Anthon** asserted that **S 1093** deals with this situation in a reasonable manner. He emphasized that public policy needs to protect the sanctity of the home.

Chairman Lodge added her reflection on a recent situation wherein a father and his children were home when an offender fleeing the police broke into the house. It traumatized the family so much they have decided to move because they no longer feel safe in their home.

The motion carried by **voice vote** with **Senator Burgoyne** and **Senator Nye** requesting to be recorded as voting nay.

GUBERNATORIAL APPOINTMENT: **Raymond David Moore, reappointment to the Commission on Pardons and Parole.** **Raymond David Moore**, Commissioner, Commission of Pardons and Parole (Commission), introduced himself and mentioned that he was first appointed to the Commission three years ago. He expressed appreciation to those who have been a support to him during his tenure on the Commission.

Commissioner Moore related that he has learned a lot serving on the Commission, and that he is ready to learn more. He discussed the work load of the Commission stating that it sits from one to two weeks each month in various prison facilities across the State, handling 100-125 cases per week in direct interviews with inmates and making parole decisions. During executive session, the Commission makes over 200 decisions in one day. The decisions deal with early parole, early discharge, pardon reviews, commutations, and self-initiated parole requests.

Commissioner Moore addressed the legislation being considered to move the hearing of firearms restoration cases into executive session. He felt that hearing these cases in open session has engendered serious threats against commissioners, as well as making public mental health and other issues of the inmate that should remain private. **Commissioner Moore** noted that all other cases are first heard in open session, and then the final decision is made in executive session.

Commissioner Moore reviewed the impact the Justice Reinvestment Initiative (JRI) has had on the work of the Commission since he began his tenure three years ago. He mentioned some of the positive results such as forming working relationships between the Commission and the Department of Correction. The directors of both entities were new at that time, worked together well, and were able to move the changes forward. Programming was instituted that had some positive outcomes for inmates. The sanctions, however, asserted **Commissioner Moore**, were not as successful. It worked for some, but not for all resulting in some serious problems involving those who should have been put back into prison. Now some changes are being made to improve this aspect of the JRI.

Commissioner Moore observed that the war on drugs has not been won. He pointed out that meth is as bad as it has ever been; heroin has made a major comeback. The highest recidivism rate among parolees is the result of meth use.

After serving several gubernatorial appointments over the years, **Commissioner Moore** commented that the work on this Commission has been his most fulfilling appointment. He brings to this reappointment skills he has developed over his previous service such as serious attention to his role as a Commissioner and diligence in his duties. He affirmed that his background, education, knowledge, and experience makes him an asset to the Commission.

Senator Burgoyne mentioned that one requirement for the Commission is partisan political balance. He asked Commissioner Moore if that balance will continue with his reappointment. **Commissioner Moore** replied that it will maintain the balance.

Senator Lee asked if the addition of new commissioners would reduce the work load. **Commissioner Moore** replied that there has been discussion regarding the need for going from five to seven commissioners. Some had concerns regarding decision making with redistribution of hearing officers. He felt there was still work to do in establishing how the new number of commissioners would function.

Senator Hagedorn requested a description of the process for executive session. **Commissioner Moore** explained that the hearing begins in open session, taking testimony from interested parties. The Commission then votes to go into executive session where they discuss the applicant's request and reports. They then vote on the issue. After that vote is taken, the Commission votes to move back into open session to announce the decision. The identity of the Commissioners who voted for or against the issue during deliberations is not revealed. These cases are heard one at a time. Records are kept and minutes are signed before the next individual case is heard. He emphasized how encouraging it is to see individuals who have been on parole come back having met all of the requirements of their parole. The most fulfilling part of this job is to grant parole to those who have turned their lives around.

Senator Davis asked if executive sessions are recorded and preserved. **Commissioner Moore** replied that the hearing officers keep records and written minutes which are signed before they go into the executive session. In addition they make audio recordings of the meetings. There is also a summary set of minutes for future reference. **Senator Davis** inquired if the executive session is recorded, and if the recording is subject to public records request. **Commissioner Moore** responded that the recorder is turned off during executive session. It is started again when the open meeting is resumes. **Senator Davis** explained that when most political entities go into executive session they deliberate. But the vote is taken after they return to open session. **Senator Davis** asked if that is the same standard for the Commission. **Commissioner Moore** advised that the Commission is under a different standard allowing the votes to be kept confidential. **Senator Davis** suggested that in the case of a two member Commission when there is a tie, the scope of who voted yes and who voted no is narrowed. He inquired if the exposure or risk for Commissioners would be increased by not providing adequate protection regarding their votes. **Commissioner Moore** explained that when the open meeting resumes, the inmate is informed of the decision. If the decision is not unanimous, the case goes to the full Commission. In the case of a three person panel, the vote has to be unanimous. If it is not unanimous, the inmate is told only that the vote was not unanimous so the case will go to the full Commission.

Chairman Lodge inquired how much time is spent for each hearing. **Commissioner Moore** stated that there is no set time for each hearing, that they are scheduled for 20 to 25 hearings per day, and they stay until they are finished. The hearings vary widely in complexity and the amount of time needed.

Chairman Lodge asked if the Commissioners ever fear for their safety. **Commissioner Moore** remarked that his career over the years has been fraught with dangerous situations. He revealed that some of the inmates in these hearings scare him, and those without the same background as his may deeply feel the threat. He emphasized that the Commissioners still do the job.

Chairman Lodge thanked Commissioner Moore and those in attendance. She specified that the vote on his appointment will be taken on Friday, March 3.

Chairman Lodge announced that there will be a meeting on Friday, March 3, and that we will begin at 1:00 instead of the usual 1:30 time.

ADJOURNED: There being no further business at this time, **Chairman Lodge** adjourned the meeting at 2:19 p.m.

Chairman Lodge
Chair

Carol Cornwall
Secretary